



City of Aliso Viejo
CITY COUNCIL
AGENDA ITEM

DATE: March 18, 2015

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: ORDINANCE CONFIRMING EXISTING PROHIBITION OF SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS

RECOMMENDED ACTION:

Staff recommends the City Council introduce and approve for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF ALISO VIEJO, CALIFORNIA AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE BY AMENDING TABLE 15.10.020 OF SECTION 15.10.020, ADDING SECTION 15.14.165, AND AMENDING SECTION 15.94.020 TO PROHIBIT SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS – PA 15-002 (ZCA) (Attachment 1).

FISCAL IMPACT

None.

ENVIRONMENTAL

The Ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly.

BACKGROUND

The City of Aliso Viejo (“City”) has received complaints about residents leasing their residential properties to travelers for short-term vacation rentals. Complainants assert that the rentals degrade the quality of their neighborhoods by generating excessive noise, parking problems, and trash. The Aliso Viejo Municipal Code (“AVMC”) does not address short-term rental uses, but it generally prohibits commercial uses in residential zones, and vice versa. Because the AVMC does not expressly prohibit short-term

rentals, the issue of the Code's intent is often disputed by violators. Therefore, our office was directed to prepare an ordinance that prohibits short-term rentals in residential neighborhoods for the Council's consideration.

DISCUSSION

Short-Term Rental Ban

The proliferation of online vacation rental websites such as Airbnb.com and Homeaway.com have encouraged and enabled City property owners, tenants, and occupants to rent their local residential properties on a short-term basis to travelers and transients. These short-term rentals, generally numbering less than 30 days, are often associated with excessive noise, parking problems, trash, and degradation of a neighborhood's residential character. Because of those nuisance issues, the City has received a number of complaints regarding residents renting their properties out as short-term vacation rentals. In short, City staff has found that vacationers using a home for a few days can approach neighborhood harmony and civility very differently from persons residing the neighborhood for a long time.

The AVMC does not expressly address short-term rentals in residential districts. Rather, AVMC Section 15.10.020, Table 15.10.020 "Permitted Uses in Residential Districts" lists uses that are permitted within each residential district. Section 15.10.020, subdivision (C) provides, in part, "If a use or structure is not listed as permitted [in Table 15.10.020], it is prohibited unless specifically determined to be permitted in accordance with AVMC section 15.06.050." (AVMC § 15.10.020(C), emphasis added.) Table 15.10.020 does not expressly permit short-term rentals in any residential district, and therefore that kind of use is prohibited in all residential districts. The City currently enforces these provisions by administratively citing violators on a case-by-case basis.

In an effort to more clearly define permitted uses within residential districts, the City directed staff to draft a proposed Ordinance that expressly prohibits short-term rentals. Under this alternative, rather than relying on the implied interrelationship and reading of the general Code provisions described above, the City Council would adopt specific Code provisions clarifying that short-term rentals are barred in residential zones. This would ease considerably the prosecutorial burden of proving Code violations, but would not, in effect, alter the Code's underlying characterization of these uses as inconsistent with the City's residential land use regulations. This is a common approach. Many cities have banned homesharing, enforcing laws that make it illegal for property owners to rent their homes periods of less than 30 days.

The attached Ordinance (Attachment 1) would amend Title 15 of the AVMC to expressly prohibit short-term rentals in residential districts to preserve the residential character of City neighborhoods and stem the negative, secondary effects caused by those uses.

Prepared by:

for Cristeva Kelly

for Scott C. Smith
City Attorney

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle

David A. Doyle
City Manager

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE CITY COUNCIL OF ALISO VIEJO, CALIFORNIA AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE BY AMENDING TABLE 15.10.020 OF SECTION 15.10.020, ADDING SECTION 15.14.165, AND AMENDING SECTION 15.94.020 TO PROHIBIT SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS – PA 15-002 (ZCA)

WHEREAS, the proliferation of online vacation rental websites such as Airbnb.com and Homeaway.com have encouraged and enabled City of Aliso Viejo (“City”) property owners, tenants, and occupants to rent their local, residential properties on a short-term basis to travelers or transients; and

WHEREAS, these short-term rentals, generally numbering less than 30 days, are often associated with excessive noise, parking problems, trash, and degradation of a neighborhood’s residential character; and

WHEREAS, the City has received numerous complaints from residents about the negative secondary effects of short-term rental uses in their residential neighborhoods; and

WHEREAS, the Aliso Viejo Municipal Code (“AVMC”) does not expressly address short-term rentals in residential districts. However, because short-term rentals are not expressly permitted in residential districts under the AVMC, such transient uses are prohibited; and

WHEREAS, the City Council desires to amend the City’s Zoning Code to expressly prohibit short-term rentals in residential districts to preserve the residential character of City neighborhoods and stem the negative, secondary effects caused by those uses; and

WHEREAS, AVMC section 15.78.050 authorizes the City Council to initiate and adopt zoning code amendments, pursuant to the Council making certain findings related to the public welfare and General Plan consistency; and

WHEREAS, notice of the public hearing on this proposed Zoning Code Amendment was published in a 1/8 page display ad in the Aliso Viejo News on January 8, 2015, and public hearing notices were posted at the Aliso Viejo City Hall, the Aliso Viejo Library, and the Aliso Viejo Sheriff Substation pursuant to California Government Code sections 65853 *et seq.*; and

WHEREAS, the City Council held a duly-noticed public hearing on March 18, 2015 to consider first reading of this Ordinance and public testimony and recommendations presented by staff in its staff report and oral presentation.

THE CITY COUNCIL OF THE CITY OF ALISO VIEJO HEREBY ORDAINS
AS FOLLOWS:

Section 1. CEQA. This Ordinance enacts changes to the City's Zoning Code in order to promote health, safety, comfort and general welfare in the community. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the activity is not a project as defined in Section 15378 of the State CEQA Guidelines. Even if the Ordinance constituted a "project" within the meaning of CEQA, the activity is exempt under State CEQA Guidelines section 15061 for the reasons set forth in this Ordinance and the corresponding staff report. The Ordinance does not have the potential for resulting in physical change to the environment, directly or indirectly.

Section 2. Findings. After receiving public testimony, reviewing the evidence submitted by staff, and discussing the proposed Ordinance, the City Council hereby finds that the amendments to the Zoning Code relating to the ban of short-term rentals in residential districts are supported by the following findings:

A. Public Welfare. Approval of the Code amendment will not create conditions materially detrimental to the public health, safety, and general welfare. Rather, the amendments are enacted to further protect residential uses by banning short-term rentals in residential districts and curbing the negative, secondary effects of such transient use, including excessive noise, parking problems, trash, and degradation of a neighborhood's residential character; and

B. General Plan Consistency. The Code amendment is consistent with the goals, objectives, and policies of the City's General Plan and any applicable specific plan. Specifically, residential housing was developed to encourage a diversity of housing types and provide affordability levels within Aliso Viejo to meet the needs of community residents. (General Plan Goals H1, p. H-6). When residential property is used for short-term rentals for travelers and transients, less long-term housing is available for community residents. The zoning amendment seeks to preserve housing for long-term residents who will invest in their neighborhoods and communities. Moreover, the amendment encourages safe and aesthetically pleasing neighborhoods, and provides adequate housing to meet the needs of all household types and income groups. (General Plan Goal H2, p. H-7). Prohibiting short-term rentals preserves the character of residential neighborhoods by minimizing the parking, traffic, and noise issues associated with short-term rentals. Further, short-term rentals in solely residential areas are not an expressly permitted use in any of the applicable specific plans, and therefore, are prohibited. (See, e.g., Glenwood Specific Plan, Table 5-22-A; Ventana Ridge Specific Plan, p. 2-1; The Commons at Aliso Viejo Town Center Specific Plan, p. IV-10; Vantis Specific Plan, pp. 2-3- to 2-4.)

Section 3. Zoning Code Amendment. Table 15.10.020 of Section 15.10.020 of Title 15 of the Aliso Viejo Municipal Code is hereby amended, pursuant to Ordinance No. 2015-_____, to add the following reference:

**TABLE 15.10.020:
PERMITTED USES IN RESIDENTIAL DISTRICTS**

	RL Low Density Residential	RM Med. Density Residential	RH High Density Residential	RVH Very High Density Res.
RESIDENTIAL USES:				
Short-term rentals, subject to AVMC 15.14.165	NP	NP	NP	NP

Section 4. Zoning Code Amendment. Section 15.14.165 is hereby added to Title 15 of the Aliso Viejo Municipal Code, pursuant to Ordinance No. 2015-_____, to read as follows:

“15.14.165 Short-term Rental Uses Prohibited.

A. Prohibition. Short-term rental uses such as transient bed and breakfast, hostel, hotel, inn, lodging, motel, resort and other transient lodging uses for remuneration are prohibited in all residential districts, except as otherwise permitted by the Municipal Code.

B. Liability and Enforcement. Any property owner, tenant, subtenant, occupant, person acting as agent, real estate broker, real estate agent, property manager, reservation service or otherwise who arranges or negotiates for the short-term use of residential property in violation of the provisions of this section shall be liable pursuant to the provisions of Chapter 1.06 of the Municipal Code.”

Section 5. Zoning Code Amendment. Section 15.94.020 of Title 15 of the Aliso Viejo Municipal Code is hereby amended, pursuant to Ordinance No. 2015-_____, to add the following definitions:

“Occupancy, Short-term’ for purposes of Section 15.14.165, means the use or possession, or the right to the use or possession, of any portion of any room or rooms offered for remuneration for dwelling, lodging or sleeping purposes, regardless of the purpose for which such rooms are rented.

‘Remuneration’ means compensation, money, rent, or other bargained for consideration given in return for occupancy, possession, or use of real property.

‘Transient’ means any person who exercises occupancy or is entitled to occupancy in exchange for remuneration for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.”

Section 6. Conflicting Regulations. Upon the effective date of this Ordinance, all former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed and declared to be of no further force and effect.

Section 7. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

Section 9. Publication. The City Clerk shall publish this Ordinance within fifteen (15) days of its adoption in accordance with California Government Code Section 36933.

Section 10. Notice of Exemption. The City Council hereby directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption within five (5) working days of first reading of this Ordinance.

Section 11. Location and Custodian of Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which these findings are based are located at Aliso Viejo City Hall, 12 Journey, Aliso Viejo, California 92656. The Director of Planning Services is the custodian of the record of proceedings.

[Signatures on Following Page]

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2015.

William A. Phillips
Mayor

ATTEST:

Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF ALISO VIEJO)

I, Mitzi Ortiz, City Clerk of the City of Aliso Viejo, California, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Aliso Viejo held on the _____day of _____ 2015, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Mitzi Ortiz, MMC
City Clerk